

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-324-WS - ORDER NO. 2022-161

March 4, 2022

IN	Application of Kiawah Island Utility,)	ORDER DENYING
RE:	Incorporated to File Proposed Changes in)	PROTECTIVE ORDER
	Rates, Charges, Classifications and/or)	
	Regulations for Water and Sewer Service)	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Motion of Kiawah Island Utility, Incorporated (“KIU” or “the Company”) for a Protective Order for certain portions of the Direct Testimony of Mujeeb Hafeez filed in the current KIU Rate Case. The Company argues that Hafeez’s testimony, on p. 16 and 19, which discusses payroll, benefits information, and payment for outside services is “personal,” and therefore exempt from disclosure under the South Carolina Freedom of Information Act. S. C. Code Ann. Section 30-4-40 (a) (2). Although the testimony does discuss payroll and benefits information for one unnamed service technician on page 19, the law does not apply an automatic exemption from disclosure for such information. The question becomes whether or not releasing the information described as “personal” publicly would constitute an unreasonable invasion of personal privacy. Pursuant to the reasoning as discussed below, we hold that no unreasonable invasion of personal privacy exists in this case, and, lacking any other basis for protection, the Motion for a Protective Order must be denied.

II. ANALYSIS

The South Carolina Supreme Court in *South Carolina Lottery Commission v. Glassmeyer*, 433 S.C. 244, 857 S.E. 2d 889 (2021) held that a public body must make two decisions before invoking the Freedom of Information Act (FOIA) exemption for unreasonable invasion of personal

privacy: 1) a public body must determine whether the information requested is personal and whether disclosure would constitute an unreasonable invasion of personal privacy; and 2) if so, the public body must determine whether to disclose the information.

The South Carolina Court of Appeals opined that the exemptions from disclosure under the Freedom of Information Act do not create a duty of non-disclosure, at most, these exemptions simply allow public agencies the discretion to withhold exempted materials from public disclosure. *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E. 2d 888 (2004).

Whether a record is exempt from disclosure under the Freedom of Information Act depends on the particular facts of the case. *South Carolina Lottery Commission, supra*. In the present case Kiawah Island Utility, Incorporated is requesting protective treatment for salary and benefits information, as well as the amount paid for outside services. The only argument put forth by the Company is that the information is personal. Although the statement is made that the information is otherwise protected by law, no explanation of such other law is given. Further, no parties have responded to the Motion.

Clearly, the information proposed to be held as confidential is part of the costs for which the Company seeks reimbursement in this rate case. KIU's Application contains the following language: "The Applicant is a public utility as defined by S.C. Code Ann. Section 58-5-10(4) providing water and sewer service to the public for compensation in certain areas of South Carolina, specifically Kiawah Island." Application, p. 1. As a public utility, the Company must publicly appear before the Commission and bear the burden of proof for its proposed rate increases. Adjustments for known and measurable changes in expenses are within the Commission's discretion in setting utility rates. *Porter v. South Carolina Public Service Commission*, 328 S.C. 222, 493 S.E. 2d 92 (1997). However, barring an unreasonable invasion of personal privacy, there is no reason for the Commission to consider such adjustments outside of public scrutiny.

The Company argues that the salary, benefits, and outside services costs are "personal," and therefore entitled to confidentiality under FOIA. The Company makes no other argument. Taken alone, this argument is insufficient. Barring a sufficient reason otherwise, a public utility's rate request must be scrutinized before the public when the utility seeks an increase in charges for

its rates and services as KIU does in the present case. Accordingly, revealing the information to the public is not an unreasonable invasion of personal privacy as discussed in the *Lottery Commission* case. Second, the Company has stated no reasonable basis for exercising the discretion to withhold information from the public view, as described in *Burton*.

Further, the request for a declaration of confidentiality for all of Hafeez's Direct Testimony is overbroad, since the language for which confidentiality is sought only appears on four (4) pages of the total of twenty-two (22) pages of Direct Testimony. The Motion for Protective Order must be denied.

III. FINDINGS OF FACT

1. Kiawah Island Utility, Inc. moves for a Protective Order, asserting that payroll, benefits information, and payment for outside services are "personal," and therefore exempt from disclosure under the South Carolina Freedom of Information Act. S. C. Code Ann. Section 30-4-40 (a) (2).

2. The Commission must determine whether disclosure of such information is an unreasonable invasion of personal privacy, and, ultimately, whether the information should be declared as public.

IV. CONCLUSIONS OF LAW

1. No unreasonable invasion of personal privacy would occur upon public disclosure of the information on salaries, benefits, or payment of outside service costs in this case.

2. Salaries, benefits, and payment of outside service costs do not fall under the "personal" exemption from the South Carolina Freedom of Information Act in this case.

3. As a public utility, the Company must publicly appear before the Commission and bear the burden of proof for its proposed rate increases. Adjustments for known and measurable changes in expenses are within the Commission's discretion in setting utility rates. Barring an unreasonable invasion of personal privacy, or other exemption, there is no reason for the Commission to consider such adjustments outside of public scrutiny.

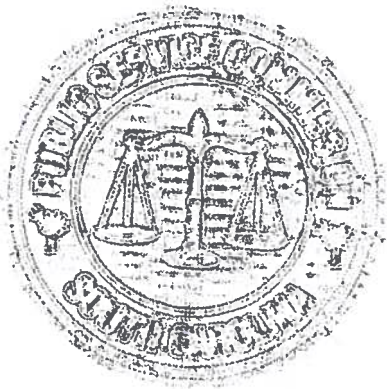
4. The Motion for Protective Order must be denied.

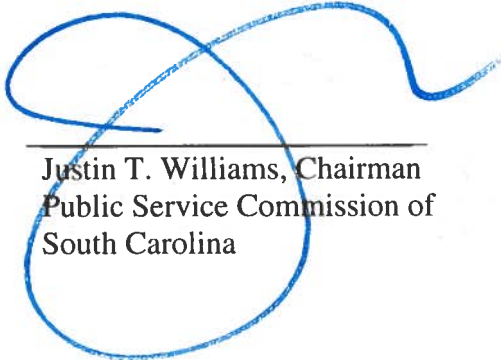
V. ORDERING PARAGRAPHS

IT IS THEREFORE ORDERED:

1. The Motion for Protective Order is denied.
2. KIU shall file an unredacted public version of Mujeeb Hafeez's Direct Testimony with the Commission, and serve it on the parties within ten (10) days of receipt of this Order. This new unredacted version of the testimony will replace the versions previously pre-filed with the Commission.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:




Justin T. Williams, Chairman
Public Service Commission of
South Carolina